

CHAPTER 7 SUBCONTRACTS

Introduction

This chapter provides instructions on how to obtain authorization to subcontract WIC services, and to manage the relationship with a subcontractor. A subcontract is a written agreement between a local agency and another person or organization to provide services or perform duties identified by the local agency. Subcontractors may provide some or all of the services outlined in the local agency's "Scope of Work" (Exhibit A of the local agency's contract).

I. SUBCONTRACT CRITERIA

Role Definitions

Local agency must determine whether or not a person is an employee or a subcontractor for two reasons:

- To determine if submission of a "Request to Subcontract" is necessary; and
- To comply with State/Federal statutes governing the collection of payroll taxes.

The determination of whether or not someone who is employed by the local agency via an agreement is an employee or a subcontractor is based on various factors. If the following statements are true, it can be presumed that a contracted person is an employee:

- Employee can quit or be terminated at any time without being legally obligated for failure to complete the job;
- A supervisor (or designated person) assigns, reviews, and supervises employees' work; and
- Employee cannot renegotiate the amount paid for services at any time he/she chooses.

**State's Right to
Approve or
Disapprove**

The State reserves the right to approve or disapprove a local agency's selection of a subcontractor, require the substitution of a subcontractor, and terminate a subcontract assigned under the local agency's contract with the State WIC Branch.

**Written
Authorization
Required**

The local agency must request official written authorization from the State WIC Branch prior to entering into a subcontract **of \$5,000 or more**. If the subcontract amount is under \$5,000 written authorization is not required. **The funds for subcontracts are to be budgeted in** Line Item #4 of the local agency's WIC contract budget.

If the local agency is requesting approval for more than one subcontract, separate written authorization for each subcontract must be submitted.

For a subcontract of \$5,000 or more, the local agency must obtain at least three bids or justify a sole-source award. This information must be maintained on file at the local agency for future audits.

**Subcontractor
Award Process**

The local agency is responsible for ensuring that the award process used in the selection of a subcontractor is conducted in a manner that provides open and free competition.

**State's Right to
Waive Review of
Actual Subcontract
Documents**

In accordance with the provisions of the local agency's contract with the State WIC Branch, prior review and written approval by the State WIC Branch of actual subcontract documents (i.e., actual written agreement between the local agency and subcontractor) is required for subcontracts of \$5,000 or more. The State WIC Branch at its discretion may elect to waive this right.

II. LOCAL AGENCY RESPONSIBILITIES

Local Agency's Responsibilities

The local agency is responsible for ensuring that:

- all performance requirements of the subcontract are met
- the subcontractor's "Scope of Work" is consistent with the local agency's contract with the State WIC Branch and must be included in the subcontract language
- payments are made to the subcontractor in a timely manner
- a copy of the following documents are maintained on file at the local agency for approval, inspection, or audit upon the State WIC Branch's request:
 - 1) approval documents from the State WIC Branch
 - 2) each subcontract entered into, and
 - 3) an explanation of the award process for selection of the subcontractor
- the subcontract is a legally binding document, and includes all provisions requiring compliance with applicable terms and conditions of local agency's contract with the State WIC Branch
- the following clause, relevant to record retention, shall be included in all subcontracts:

(Subcontractor Name) agrees to maintain and preserve, until three years after termination of *(Contract Number)* and final payment from the State, and to permit the State or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers, and records related to this subcontract.

The local agency is the subcontractor's sole point of contact for all matters related to the local agency's contract with the State WIC Branch, unless otherwise stipulated in writing by the State WIC Branch.

The local agency is responsible for the subcontractor's actions or failure to take required action in regard to fulfilling requirements of the local agency's contract with the State WIC Branch.

III. PROCESS FOR LOCAL AGENCY ENTERING INTO A SUBCONTRACT

The following table illustrates the three steps needed when a local agency is requesting to enter into a subcontract totaling \$5,000 or more:

Step	Responsible Party	Action Required
1	Local Agency	Submits the following subcontract documentation to WIC Regional Advisor: <ul style="list-style-type: none">• Cover letter on local agency's letterhead requesting a subcontract which must include original signature (in blue ink) of the WIC Director.• "Request for Authorization to Subcontract" form (Attachment 7-1);• Justification; and• "Subcontract Worksheet" form, if applicable. Refer to Chapter 1, Attachments 1-10 through 1-12.
2	State WIC Branch	Reviews subcontract documentation submitted by the local agency and notifies local agency of approval or disapproval via returned copy of above form.
3	Local Agency	Receives authorization and develops subcontract.

IV. REQUIRED DOCUMENTATION

The following documentation must be submitted to the State WIC Branch by the local agency when requesting authorization to enter into a subcontract:

Required Documentation	Description
Cover Letter	<p>A brief letter requesting formal authorization to subcontract.</p> <p>The letter must be typed on the local agency's letterhead and must include the original signature (in blue ink) of the WIC Agency Director.</p>
Request for Authorization to Subcontract Form	<p>This form (Attachment 7-1) identifies the local agency and the proposed subcontractor, and serves as a checklist for the local agency to ensure that all required documentation is included. This form also identifies the subcontract term and amount. The subcontractor signs this form. An original signature (in blue ink) is required.</p>
Justification for the Need to Subcontract	<p>The justification must include all details for evaluating the necessity or desirability of incurring such cost, including the following:</p> <ul style="list-style-type: none">• State the reason the local agency is unable to perform the services to be subcontracted;• Provide an analysis of the cost benefits of entering into a subcontract. If subcontracting is <u>not</u> cost effective, an alternative justification must be provided (e.g., efficiency, customer service, practicality, other benefits, etc.);

Required Documentation	Description (continued)
	<ul style="list-style-type: none"> • Identify the basis for determining the reasonableness of cost, rate of pay, etc.; and • Provide a detailed "Scope of Work" to be performed by the subcontractor.
Subcontract Worksheet Form	<p>If the <u>subcontract amount totals \$50,000 or more</u>, the following document must be submitted with the "Request for Authorization to Subcontract":</p> <ul style="list-style-type: none"> • "Subcontract Worksheet," (Refer to Chapter 1, Attachments 1-10 through 1-12). <p>This form must also be <u>identified</u>, <u>incorporated</u> by reference in the subcontract, and <u>attached</u> to the subcontract.</p>

Mailing Address

The local agency must submit the original signed copy and one legible photocopy of the required documents for review and approval to:

State WIC Branch
Local Agency Support Unit
Attention: Regional Advisor
3901 Lennane Drive
Sacramento, CA 95834

Notification of Decision

Upon receipt and review of the local agency's request for authorization to enter into a subcontract, the State WIC Branch will notify the local agency of the results of the review. A copy of the "Request for Authorization to Subcontract" will be returned to the local agency signed by the State WIC Branch staff indicating approval/disapproval of the subcontract request.

No work shall be performed by the subcontractor prior to receipt of approval from the State WIC Branch. Work performed by the subcontractor prior to the receipt of such approval will be at the sole risk of the local agency.

V. DEVELOPMENT OF A SUBCONTRACT

Elements of a Subcontract

After obtaining authorization to enter into a subcontract (copy of approved "Request for Authorization to Subcontract"), the local agency may develop the actual subcontract language, and provisions.

The following information identifies the elements that the local agency must incorporate into the subcontract language.

- the legal names of both parties to the subcontract (local agency and subcontractor),
- full address of both parties,
- term of the subcontract (beginning and ending dates),
- maximum amount payable (subcontract amount),
- reimbursement provisions (method, rate, frequency, etc.),
- termination clause,
- a detailed explanation of the specific services to be performed or provided, or the product to be produced, by the subcontractor, i.e., "Scope of Work."
- subcontract shall include all State Required Provisions of the Exhibit D(F), which is part of the local agency's contract with the State WIC Branch.

If the subcontract amount totals \$50,000 or more, the following document must be submitted with the “Notification of Subcontractor’s”:

- “Subcontract Worksheet” (Refer to Chapter 1, Attachments 1-10 through 1-12), and

This form must also be identified, incorporated by reference in the subcontract, and attached to the subcontract.

VI. SUBCONTRACT RENEWAL

Subcontract Approval Process

When a subcontract has a cumulative budget that equals \$5,000 or more per fiscal year, State WIC Branch approval is required. If the initial subcontract totaled \$2,000 and the renewed subcontract totals \$3,500 for a grand total of \$5,500, State WIC Branch approval is required.

If the local agency is requesting approval to renew an existing subcontract for the following budget period, the request must be submitted by September 1 of the current budget period or with the current “Funding Application”. If the request applies to the current budget period, the local agency must notify the State WIC Branch, upon occurrence, during the year.

A new “Request for Authorization to Subcontract” must be submitted by September 1 for the subsequent budget period for the purposes of confirming the new term and amount of the subcontract, and to ensure that the subcontractor’s renewed contract contains appropriate provisions and documentation.

Step	Action
The following steps are required to renew an existing subcontract:	
1	<p>Local agency submits to the State WIC Branch:</p> <ul style="list-style-type: none"> • A cover letter typed on the local agency's letterhead requesting formal authorization to renew subcontract which should include the original signature (in blue ink) of the WIC Agency Director or the Primary WIC Program Contact, • A new "Request for Authorization to Subcontract" (with original signatures in blue ink)* • A copy of the existing, WIC Branch-approved "Request for Authorization to Subcontract," and • Subcontractor's "Budget Summary" <u>if</u> subcontract totals \$50,000 or more. <p>Note: If the local agency has been working with a subcontractor but did not previously request approval, a "Request for Authorization to Subcontract" form must be submitted along with the request to renew the subcontract.</p>
2	<p>The local agency must submit the signed original and one legible photocopy of the required documents for review and approval to:</p> <p style="text-align: center;">State WIC Branch Local Agency Support Unit Attention: Regional Advisor 3901 Lennane Drive Sacramento, CA 95834</p>
3	<p>Local agency receives approval/disapproval from the State WIC Branch to renew existing subcontract via return copy of the "Request for Authorization to Subcontract."</p>
4	<p>If approved, the local agency renews existing subcontract.</p>

VII. REIMBURSEMENT FOR SUBCONTRACT

Invoice Process

Following receipt of all necessary subcontract documents, and upon approval by the State WIC Branch to enter into a subcontract, the local agency may claim reimbursement for subcontract expenses.

For a subcontract of \$50,000 or more, the local agency is **required** to attach the subcontractor's invoice and "Monthly Expenditure Verification" to the local agency's invoice and "Monthly Expenditure Verification."

The local agency must provide the subcontractor with the blank forms necessary for preparation of the Invoice and "Monthly Expenditure Verification." Blank copies, which may be adapted for use by a subcontractor, are located in Chapter 11.

Line item Shift Requests

It is the local agency's responsibility to review and approve any line item shift requests submitted by the subcontractor.

VIII. PROCUREMENT PROCESS FOR SUBCONTRACTORS

Procurement Approval

The local agency must obtain prior approval from the State WIC Branch, on behalf of the subcontractor, for procurement requests of \$5,000 or more, (e.g., equipment, supplies, services, etc.).

The method used by a subcontractor to procure equipment is based on the subcontractor's type of organization (i.e., local government or private nonprofit agency), not the local agency's.

The local agency is responsible for ensuring that the subcontractor's procurement requests of \$5,000 or more are submitted directly to the local agency. The local agency will then process the request in accordance with the local agency's contract with the State WIC Branch.

IX. ATTACHMENTS

Attachments

Attachment for Chapter 7 to follow this page.

REQUEST FOR AUTHORIZATION TO SUBCONTRACT

New <input type="checkbox"/>	Private Non-profit <input type="checkbox"/>	<input type="checkbox"/> Budget Year 1 ~ FFY _____
Renewal <input type="checkbox"/>	Government <input type="checkbox"/>	<input type="checkbox"/> Budget Year 2 ~ FFY _____
Amended <input type="checkbox"/>		<input type="checkbox"/> Budget Year 3 ~ FFY _____

I. Contractor Information

Legal Name (Local Agency):

Mailing/Street Address:

City: State: Zip:

Contract Number:	Contract Amount: \$	Contract Term:
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Local Agency Contact Person:	Phone Number:	Fax Number:
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II. Subcontractor Information

Legal Name of Subcontractor:

Mailing/Street Address:

City: State: Zip:

Subcontract Term:	Subcontract Amount: \$	Federal Taxpayer I.D. #:
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Brief statement of proposed subcontract services:

By signing this form, subcontractor agrees to all terms and conditions of the contract entered into by the Contractor with the State of California.

Subcontractor Signature	Date
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By signing this form, Contractor certifies that all requirements are included in this request to subcontract.

Contractor (WIC Director)	Date
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State WIC Branch Use Only

Regional Advisor (Signature)	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Date
Unit Chief (Signature)	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Date
Contract Analyst (Signature)	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Date

REQUEST FOR AUTHORIZATION TO SUBCONTRACT INSTRUCTIONS

Complete this form when requesting authorization to enter into a **new** subcontract agreement, or for the **renewal** of a subcontract agreement.

The purpose of this form is to ensure the appropriate documentation and provisions have been incorporated/attached to the subcontract.

This "Request for Authorization to Subcontract" form must be completed and approved by the State WIC Branch **prior** to a request for reimbursement of subcontract expenditures.

Mail the original and one (1) legible copy to:

WIC Supplemental Nutrition Branch
Attn: Regional Advisor
Local Agency Support Unit
3901 Lennane Drive
Sacramento, CA 95834

Subcontract Requirements

1. If the subcontract total is \$50,000 or more, the subcontractor's "Budget Worksheet" for Line Items 1 and 4 must be submitted to the State WIC Branch.
2. This form must be attached to the Contractor's cover letter and justification requesting formal authorization to enter into a subcontract. The justification must meet the following requirements:
 - A justification of the need to subcontract;
 - An analysis of the cost benefits for entering into a subcontract;
 - The basis for determining reasonableness of the cost, rate of pay, etc.;
 - A detailed Scope of Work to be performed by the subcontractor that is consistent with the Contractor's Scope of Work;
 - Include State required provisions as specified in Exhibit D(F) of the Contractor's agreement; and
 - Any other terms and conditions required by the Contractor to ensure the subcontract is a legally binding document.
3. The start date must be the same or after the Contractor's agreement with the State. The end date must be the same, or before the ending term date of the Contractor's agreement with the State. (The subcontract term cannot exceed the Contractor's agreement term with the State.)
4. The subcontract amount must be less than the amount of the Contractor's agreement with the State.
5. The Contractor's method for awarding to the subcontractor must be documented and available for review upon request by the State.

Refer to the Contract Management Binder, Chapter 7 for detailed instructions.